IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 307 OF 2004

IN

SUIT NO. SUMMARY SUIT NO. 1747 OF 2004

Deepchand Ashulalji Jain .. Plaintiff

versus

Khimchand Bafna .. Defendant

...

Mr.Chandra Naik for the plaintiff.

Mr.M.L. Chaturvedi for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 23rd March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This Summons for Judgement is taken out by the plaintiff in a suit filed by it against the defendant for the recovery of the loan with interest.

3. On 7th May 1997, the plaintiff advanced to the defendant a loan of Rs.1,00,000/- by cheque. A copy of the statement of extract of the bank account showing clearance of the cheque to the defendant is filed as Exhibit-A to the plaint. On 23rd July 1998, the defendant acknowledged in writing the balance of Rs.1,16,290/- inclusive of interest upto 31st March 1998. Again on 7th July 1999, the defendant acknowledged in writing balance of Rs.1,34,290/- inclusive of interest upto 31st March 1999. The two acknowledgements are annexed to the plaint as Exhibits "B" and "C". Again on 30th July 2000, the defendant acknowledged in writing the balance of Rs.1,18,000/- inclusive of interest upto 1st April 1999. No explanation is offered by the parties as to how the balance which was Rs.1,34,290/- as on 31st March 1999 was reduced to Rs./1,18,000/- on 1st April 1999. However, since last acknowledgement dated 30th July 2000 Exhibit-B to the plaint is produced by plaintiff himself and is not disputed by the defendant, it must be assumed that the balance as on 1st April 1999 was only Rs.1,18,000/-.

4. In the affidavit in reply filed by the

defendant, the defendant has not denied receipt of the loan. He has however only claimed that defendant is not liable to pay interest more than 15% p.a. as was agreed between the parties. In any event, the defendant has no defence for non-payment of the remitted amount.

5. In paragraph no.3 of the affidavit in reply, the defendant has contended that the plaintiff was a money lender. However, the defendant has not produced any evidence to show that plaintiff was a money lender and that the plaintiff was engaged in the business of moneylending. It was held by this Court that 3 or 4 stray transactions of advancing of loans would not make a person money lender.

6. In the circumstances, in my view, the defendant has no defence for non payment of admitted amount of Rs.1,18,000/-. Hence, the defendant can be granted only a conditional leave to defend the suit. Accordingly, the defendant is granted conditional leave to defend the suit subject to his depositing in the Court a sum of Rs.1,18,000/- within a period of four weeks. On such deposit, the plaintiff is permitted to withdraw the same by furnishing security

to the satisfaction of Registrar (O.S.) and Prothonotary.

7. On deposit of the money, the suit shall stand transferred to the list of commercial causes. The defendant shall file written statement within a period of one month.

D.G.KARNIK, J